

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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UNITED STATES SECURITIES :
AND EXCHANGE COMMISSION, :
 :
Plaintiff, :
 :
v. :
 :
MARLON QUAN, et al. :
 :
Defendants. :
----- X

CIVIL ACTION
0:11-cv-00723-ADM-JSM

DECLARATION OF TIMOTHY S. LEIMAN

I, Timothy S. Leiman, declare under penalty of perjury, in accordance with 28 U.S.C. §1746, as follows:

1. This declaration is submitted in support of Plaintiff United States Securities and Exchange Commission's ("SEC's" or "Commission's") Motion for an Extension of Discovery Deadlines.
2. I am a Senior Trial Counsel for the U.S. Securities and Exchange Commission – Division of Enforcement, staffed at the Commission's Chicago Regional Office at 175 West Jackson Blvd., Suite 900, Chicago, IL 60647.
3. Along with other Commission attorneys, I have represented the Commission in this action since July 2011.
4. During fact discovery in this matter, I had several phone conversations and exchanged e-mails with counsel for Defendants Marlon Quan,

Acorn Capital Group LLC (“Acorn”), and Stewardship Investment Advisors LLC (“Stewardship IA”) in which we discussed the form, volume and availability of documents and Electronically Stored Information (“ESI”) that were, at some point, in Defendants’ possession, custody or control.

5. During those conversations, defense counsel informed me that Acorn’s and Stewardship IA’s corporate documents – consisting of “hundreds” of boxes of paper documents – were being kept in two storage units at Westy Self Storage in Port Chester, New York.

6. Defense counsel stated that Quan had stopped paying his bills for the two storage units at Westy Storage and that, therefore, Quan’s position was that he no longer had possession, custody or control of Acorn’s or Stewardship IA’s documents.

7. Defense counsel also informed me that Defendants had, at some point, retained Ikon Office Solutions (“Ikon”) – a company that is now a subsidiary of Ricoh USA, Inc. (“Rico”) – to scan at least a portion of Defendants’ corporate records and create a searchable database for those documents (the “Ikon Database”). Defense counsel stated that the database did not necessarily incorporate all of the paper documents in the Westy Storage units.

8. Counsel for the Defendants stated that Quan had stopped paying Ikon’s bills and, consequently, Quan’s position was that he no longer had possession, custody or control of the entire Ikon Database.

9. At no point did defense counsel indicate that – above and beyond the paper documents and the Ikon Database – Ikon (at the direction of Defendants Quan, Acorn and Stewardship IA) had created complete bit-for-bit images of approximately 30 computer hard drives used by Quan and his employees.

10. On November 7, 2012, the Commission served a subpoena for documents on Ricoh requesting that Ricoh produce, among other things, the Ikon Database that was created for Quan, Acorn, and Stewardship IA.

11. After serving the subpoena on Ricoh, I had several phone conversations with Ricoh's outside counsel to determine the volume and format of the data responsive to the Ricoh subpoena.

12. On November 16, 2012, during one of those initial phone conversations, Ricoh's outside counsel informed me that, in addition to over 553 gigabytes of data related to the Ikon Database, Ricoh had created complete bit-for-bit images of a number of computer hard drives belonging to Acorn, Stewardship IA, and its individual employees. Ricoh's counsel stated that the drives were being preserved at Ricoh's facility in Houston, Texas and initially estimated the volume of material from those preserved, imaged drives to be in excess of 1 terabyte (which would translate to millions of pages of typewritten text).

13. On November 30, 2012, Ricoh's counsel sent me an e-mail listing 30 hard drives that had been imaged by Ricoh. (E-mail attached as Exhibit A.) The

list includes hard drives from several critical witnesses, including Robert Bucci (Acorn's CFO and Stewardship IA's assistant portfolio manager), Domenic Miele (Associate at Acorn with primary responsibility for the Petters PAC Funding LLC account), Mark Sullivan (Acorn's VP of Operations), John Ruggiero (VP and Chief Compliance Officer for Stewardship IA), Richard Feldman (Acorn's Interim CFO), and Marlon Quan himself.

14. Sullivan and Ruggiero have already been deposed in this case and Feldman's and Quan's depositions are currently scheduled for later this month.

15. Moreover, absent an extension, the Commission's expert reports are due on January 7, 2013.

16. Based on the number of hard drives at issue, it appears likely that the bit-for-bit drive images that were recently discovered by the Commission contain well in excess of 1 terabyte of data.

17. I have consulted with one of the Commission's information technology support specialists who has informed me that – even setting aside easily accessed electronic documents in active files – a forensic review of the hard drives could reveal extensive data relevant to the claims and defenses of this case, including (among other things):

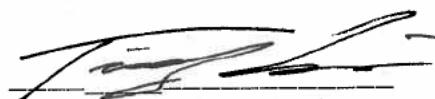
- Deleted files and deletion attempts;
- Web browser history and cookies;
- User activity logs;
- Additional metadata (including metadata that could demonstrate the authorship of documents);
- Tracked changes on documents;
- Hidden files and folders;
- Files with altered extensions;

- Encrypted files;
- Hidden hard drive partitions (where someone segments the hard drive in such a way as to hide the contents of a portion of the hard drive from other users or from searches); and
- Steganography – *i.e.*, data hidden within other file types.

18. Prior to my November 16, 2012 discussion with Ricoh, neither the Defendants nor defense counsel had disclosed to me that approximately 30 computer hard drives used by Quan and his employees had been imaged and preserved and that over 1 terabyte of potentially responsive data had been archived by Defendants' vendor, Ikon. I have consulted with my colleagues at the Commission who have participated in the litigation of this matter and they have informed me that, likewise, neither Defendants nor defense counsel disclosed to them the existence of the 30 imaged and preserved hard drives.

I declare that the foregoing is, to the best of my knowledge, true and correct.

Executed on December 6, 2012



Timothy S. Leiman

EXHIBIT A

Renardo, Sara L.

From: Lechtman, Evan <Lechtman@BlankRome.com>
Sent: Friday, November 30, 2012 2:59 PM
To: Leiman, Timothy
Subject: Ricoh: SEC subpoena

Tim:

As we discussed, Ricoh currently has a forensic image of the following Stewardship/Acorn hardware:

Whelan	Dean	Dell	Dimension 2350
Martinenas	Vitas	Dell	Dimension 2400
Feltman	Peter	Dell	Optiplex GX260
Miele (Newest)	Domenic	Dell	Dimension 5150
Hong	Mark	Dell	Dimension GX260
Jessup	Kelly	Dell	Vostro 200
Rausch	Jessica	Dell	Dimension 3100
Miele (Old)	Domenic	Dell	Dimension E520
Sullivan	Mark	Dell	Dimension 2400
Aaron	David	Dell	Dimension 3100
Bucci (Old)	Bob	Dell	Optiplex GX260
Bromberg (spare)		Dell	Dimension 2400
PRC Intern		Dell	Dimension 2400
Chase	Emily	Dell	Dimension 3000
Seidenwar (Old)	Paul	Dell	Optiplex GX260
Quan	Christina	Dell	Dimension 3000
Bucci (New)	Bob	Dell	Vostro 200
Urban	Ward	Dell	Optiplex GX260
Pent	Lisa	Dell	Dimension 3100
Scanlan	Marcia	Dell	Dimension 3100
Feldman	Richard	Dell	Dimension 2400
Raefski	Dale	Dell	Dimension 3000
Smith	Lee	Dell	Dimension 2400
Duroske	Paul	Dell	Dimension 2350
Rodriguez	Nelson	Dell	Dimension 2400
Bloomberg		Dell	Optiplex GX260
Quan	Marlon	Dell	Dimension E520
Ruggiero	John	Dell	Dimension 3000
Seidenwar (New)	Paul	Dell	Dimension E520
McGill	Mary	Dell	Vostro 200
Unknown	Unknown	Maxtor	OneTouch4 External USB

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